



Arizona Medical Board

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FINAL MINUTES FOR BOARD OFFSITE PLANNING MEETING

HELD ON SEPTEMBER 5, 2008

At the Hilton El Conquistador Hotel, 10000 North Oracle Road, Tucson, AZ 85737

Board Members

William R. Martin III, M.D., Chair
Douglas D. Lee, M.D., Vice Chair
Dona Pardo, Ph.D., R.N., Secretary
Robert P. Goldfarb, M.D., F.A.C.S.
Patricia R. J. Griffen
Andrea E. Ibáñez
Ram R. Krishna, M.D.
Todd A. Lefkowitz, M.D.
Lorraine L. Mackstaller, M.D.
Paul M. Petelin Sr., M.D.
Germaine Proulx
Amy J. Schneider, M.D., F.A.C.O.G.

Call to Order

The meeting was called to order at 9:15 a.m.

Roll Call

The following Board Members were present: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board Member was absent: Dr. Krishna.

Monty Lee, Jennifer Boucek and Anne Froedge were present from the Attorney General's Office.

Call to the Public

No one was present for Call to Public.

Dr. Martin announced a social event held at Dr. Mackstaller's home the evening before. Some Board members were present, but no Board business was discussed. Dr. Martin and fellow Board members thanked the hostesses of the social event for their hospitality.

Dr. Martin also announced that a Board training was held this morning. A quorum of the Board was not present and no cases were discussed.

Hospital Duty to Report Malpractice Actions Settled on Behalf of Physicians

Ms. McGrane presented the issue to the Board. She stated that the Board raised concerns in the past that some hospitals and clinics found a loophole in the malpractice reporting requirements by settling cases on behalf of the physicians. Ms. McGrane provided examples of statutory language other states, such as Minnesota, use to make these settlements reportable to the medical board.

Dr. Goldfarb agreed that there is a loophole from reporting physicians to the Arizona Medical Board and to the National Practitioners Data Bank (NPDB) by settling claims in the name of the corporation. Physicians are not named in the claim. Dr. Goldfarb proposed the following language to prevent this loophole:

"The medical director of a hospital or medical clinic shall report to the Arizona Medical Board within 30 days any action taken by the institution in the settlement of a professional liability claim or in the event of a judgment against the institution in a medical malpractice action. The report shall include the names of the entity or entities making payment,

the party or parties named in the settlement or judgment award, the names of physicians either named in the malpractice action or who were treating physicians in the medical liability case.

The Board will review these actions in medical professional liability settlements and awards as to whether further investigation is required or whether disciplinary action against individual physicians is warranted on the basis of further investigation.”

Dr. Petelin questioned whether someone who was not an MD or DO could be named the medical director of a clinic or facility and therefore, not be required to report these actions to the Board. Dr. Goldfarb acknowledged that this is a possibility and the Board may want to consider alternative language to address this issue. Ms. Froedge suggested looking at the way hospitals and clinics are structured to determine who would be the appropriate person to report malpractice actions to the Board.

Dr. Pardo asked if the Board could require physicians named in a claim to directly report actions to the Board. Board members concurred that the problem is that physicians may be named in the initial claim, but their names can be dropped during the settlement or judgment process.

Dr. Goldfarb stated that in most malpractice cases, there are only a few physicians involved. The Board can initiate investigations against those physicians and obtain the records to determine if unprofessional conduct occurred. Dr. Lee was concerned that the Board may be heavy handed. Dr. Goldfarb stated that it would be a consistent Board practice to look at these claims and it would be consistent with the legislative intent.

Dr. Petelin asked if the proposed language could be changed to state that at the time a settlement is reached or judgment is rendered, the physician's still named would need to be reported. Dr. Lee stated the problem is that some hospitals do not name the physicians involved. Dr. Petelin suggested language similar to Federal mandates requiring reports to the NPDB. Mr. Lee suggested developing a cooperation with the Arizona Department of Health Services in which DHS could require hospitals to report this information to the Board. If this type of bill is not possible in the legislature, Mr. Lee suggested a statute requiring a hospital medical director to be responsible for being aware of those claims and making those claims known to the Board. Mr. Lee provided the following examples of proposed statutory language:

- A. Physicians shall be aware of the resolution, resulting in any payment of a person from any source, of a claim arising from an allegation of medical malpractice, gross negligence, negligence, unprofessional conduct or other conduct relating to the treatment of a patient who is the subject of the claim and shall report all such resolutions to the Arizona Medical Board within 30 days of the resolution.
- B. Medical Directors of hospitals and medical clinics shall comply with the provisions of subsection A regarding resolutions of claims against any physician employed by or practicing at the hospital or medical clinic.
- C. The Arizona Medical Board will review the reports submitted pursuant to Subsection A and B as to whether further investigation is required or whether disciplinary action against individual physicians is warranted.

Dr. Martin suggested Staff conduct more research into how other states handle this issue and bring the matter back to a future Board meeting. Dr. Pardo suggested incorporating language into the existing statute that requires physicians to report other physicians who are or may be guilty of unprofessional conduct. Dr. Goldfarb stated that other physicians may know of a bad patient result, but may not have enough facts to know whether unprofessional conduct occurred. Additionally, the filing of a claim, in itself, is not an actionable item and is not an indication that there was unprofessional conduct. Ms. Boucek suggested focusing on the occurrence itself and the physicians involved in that occurrence. Ms. Wynn stated that it is beneficial for the Board to receive malpractice information quickly in order to conduct a thorough investigation. She suggested educating patients to file complaints with the Board. Dr. Mackstaller stated that many times, attorneys advise patients to not report actions to the Board because confidential settlements are often based on a patient's promise not to report the action elsewhere. Dr. Petelin favored putting the onus on a physician to report a malpractice case to the Board in which he or she was named as a defendant, regardless of whether the physician was named in the final settlement. The Board could quickly dismiss cases against physicians who were dropped from the claim. Ms. Boucek stated that would depend on the talents of the attorney who files the claim and that attorney's ability to name all physicians who may have been involved in the action. Ms. Froedge stated the wording needs to encompass acts that may not get to the complaint stage because they are settled quickly, but may involve significant unprofessional conduct.

Dr. Petelin stated that the Board's objective is to obtain parity in the physicians who are reported to the Board for possible unprofessional conduct and hold those physicians to the same standard as physicians who are directly named.

Dr. Martin asked that staff check North Carolina, Florida and Ohio to see how they handle these types of actions and bring proposals to the next Board meeting. He also asked that Staff look into Mr. Lee's suggestions and bring those recommendations as well.

Use of Proxy Signatures on Medical Records

Dr. Wolf stated that this issue arose from a case before the Board involving a radiologist who proxy signed a report dictated by another physician. Dr. Wolf conducted an informal survey of Arizona hospitals to determine their policies on proxy signatures. He reported that 15 of 17 hospitals employed proxy signing practices in some variety. Those hospitals that did not use proxy signing had voice recognition technology for dictating reports or had physicians who refused to employ the practice. Dr. Wolf reported that the literature suggests there is little added risk to patients by proxy signing as radiologists, in general, do not re-review their studies even when they sign their own reports. Proponents of proxy signing have found that it promotes faster availability of these reports. Additionally, Federal mandates on proxy signing have not been consistently enforced. The American College of Radiologists stated that preliminary reports can be fallacious and recommends against the practice. Voice recognition technology may make the practice obsolete. Dr. Wolf recommended the Board take no action on this issue as there is no evidence of harm to patients and because the practice is becoming obsolete. Additionally, it is an activity generally practiced in Arizona and may make radiology reports less readily available for transcription.

Dr. Wolf explained that voice recognition technology eliminates the time period for a dictated report to be transcribed by medical staff. The physician can review the report right away and make any changes immediately. The physician can then electronically sign the report and it is placed directly in the patient's chart. Dr. Petelin stated that transcription today is very rapid, especially in emergency room settings, and can be made available within 15 minutes. Dr. Wolf stated that this is dependent on hospitals and the priorities they assign to transcription in different hospital departments. He also noted that voice recognition technology will be used more widely in large urban hospital settings.

Dr. Schneider agreed that, with the advance of technology, the Board should take no action on this agenda item. Dr. Martin stated that he sees this as an issue of accountability and the physician who puts his or her name on the report should be held responsible for the content of the report. Dr. Goldfarb stated that because there is little evidence to suggest patient harm with proxy signing, he would agree to take no action. However, he agrees with Dr. Martin that individual physicians should be held responsible from a liability standpoint.

MOTION: Dr. Goldfarb moved to take no action on this issue.

SECONDED: Dr. Petelin

The Board agreed that these issues should come before the Board on a case by case basis. Dr. Martin spoke against the motion and stated that at the least, there should be a statement on the Board's FAQ section stating that when a physician signs a report, he or she is responsible for the content of the report. Dr. Schneider stated that often, the purpose of signing a report on behalf of another physician is to make sure the report reads correctly and that it makes sense. It does not always mean that the physician signing the report has re-read the study dictated. This process would slow the process down and would mean that the signer would also bill for reading the study. Ms. Ibáñez asked what the purpose was for signing the report if not to verify the information contained in it. What does the signature mean? Dr. Martin agreed and stated that this is not a gray area. Dr. Goldfarb noted that this issue is similar to wrong site/wrong level surgery and the Board should address this issue. He also noted that proxy signing can differ from practice to practice.

Ms. Froedge stated that attorneys often sign documents with the caveat of "Approved as to form." Legally, she is unaware of the consequences of that signature and attorneys must make a judgment call as to who they are willing to sign for.

VOTE: 9-2

Motion passed.

Investigating Actions Taken by Other State Medical Boards

Ms. Wynn stated this was a matter that came up at a recent Board meeting. The Board often receives notice of actions taken by another state against a physician licensed in this state. The Board is authorized to take actions against these physicians pursuant to A.R.S. 32-1401 (27)(o). Agency staff is often limited in its ability to investigate these cases because the Arizona Medical Board does not have subpoena powers in those states, some states do not have statutory authority to share their investigative files with us, and because of privacy issues, most medical providers, hospitals, and attorneys will not provide the Board with copies of patient medical records. Ms. Wynn stated that under the leadership of the Board's

former Executive Director, Tim Miller, staff considered the backlog of cases and opted not to pursue an independent investigation.

The Board took this information under advisement.

Managing Call to Public

Dr. Martin stated that the Board often runs behind in its formal interview cases because of the volume of people appearing for Call to Public. At the last Board meeting, staff did not schedule formal interviews in the morning of the first day. This helped. He asked Board members for additional comments. Dr. Martin clarified that the Board currently limits the number of speakers to three people per side. Dr. Pardo favored allowing more time for Call to Public and filling in with other business if Call to Public runs short. Ms. Ibáñez suggested limiting the number of minutes for a person to speak, especially if that person speaks at more than one Board meeting on the same case. Dr. Schneider favored limiting the number of minutes to three minutes. Dr. Petelin suggested limiting Call to Public to once a day. Dr. Lee asked if there was a way to determine who would be speaking.

Mr. Lee stated that statute requires a Board to allow a person involved in a complaint to address the Board. He also stated that any time the Board agendizes a Call to Public, the Board cannot restrict the subject matter.

Dr. Wolf suggested allowing complainants to submit a video statement that could be made in advance. Several Board members opposed this idea.

Dr. Martin questioned limiting the number minutes for a person to speak as people often come in from other states or cities to address the Board. This can be disrespectful. Dr. Goldfarb noted that in the past, when there are a large number of people present to speak to the Board, the Chair has limited the number of minutes for people to speak. Mr. Lee stated that this practice is common at other State boards. The Board does not have to be inundated with repetitious material. Dr. Martin asked if the Chair has to give the same rights to everyone present at Call to Public. Mr. Lee stated that the Chair can limit certain speakers in order to maintain control of the meeting. Dr. Lefkowitz asked if the Board can limit the props, such as easels, etc., complainants can bring with them. Dr. Martin asked if the Board would support cutting off speakers at the end of their five minutes. Dr. Petelin was in favor of the Chair limiting the number of minutes per speaker depending on the number of people present to speak. Ms. Boucek stated the Board has the option of asking questions in order to extend the time. The Board members stated it has been the Board's policy not to engage in discussion.

Dr. Mackstaller agreed with the Board's current practice to schedule time specific matters to later in the day. However, she was opposed to limiting the number of minutes as people have the right to be heard. Board members also expressed opposition to requiring people to sign up in advance.

MOTION: Dr. Schneider moved to place no time specific items prior to the afternoon on the first day.

SECONDED: Dr. Mackstaller

VOTE: 11-0

Motion passed.

Dr. Martin asked Board members to consider changing the amount of time speakers may address the Board from five to three minutes.

MOTION: Ms. Griffen moved to keep the length of time a speaker may address the Board at five minutes.

SECONDED: Dr. Lee

VOTE: 5-6

Motion failed.

MOTION: Dr. Petelin moved to limit the amount of time a speaker may address the Board to 3 minutes, or at the discretion of the Chair.

SECONDED: Dr. Goldfarb

VOTE: 8-3

Motion passed.

MOTION: Dr. Schneider moved to limit the number of Call to Publics on the agenda to one per day.

SECONDED: Dr. Petelin

VOTE: 11-0

Motion passed.

Dr. Pardo asked if the Board has to do a Call to Public each day. Ms. Boucek stated that it is not required; however, it is preferable, especially as some cases are scheduled for the second day. The Board does not need to make a formal vote on when the Call to Public is held.

Update on Formal Hearing Caseload

Ms. Wynn provided a memo to the Board with the number of outstanding cases pending a formal hearing since the Board appropriated funds for outside legal counsel. The Attorney General's Office referred 21 cases to outside counsel and due to the diligent work from the AG's Office and outside counsel 53 cases have been resolved. There are 22 cases with no disposition, including seven newly referred cases. Ms. Wynn stated the agency has been pleased with the outside counsel and stated the agency may continue to work with these firms on a case by case basis in the future. Mr. Lee thanked Ms. Wynn and her staff for their cooperation in helping to reassign cases and move them forward for adjudication.

Dr. Martin asked what the Board can do to facilitate moving current cases to the Board as they have been moving in the past year. Ms. Wynn informed the Board that she and Amanda Diehl have been meeting with each litigator every week to prioritize cases and identify case statuses. Dr. Martin reminded the Board that they promised the legislature it would not accumulate a backlog again in exchange for receiving funding. Ms. Wynn stated that in clear-cut cases, Board staff has been willing to negotiate consent agreements in order to alleviate the number of cases going forward for formal hearing. She will also monitor the number of cases forwarded to formal hearing and ensure the numbers do not escalate. Dr. Martin asked that this type of report be provided to the Board as a six month update. Dr. Lee asked if there was a way to develop a metric to alert the Board when the number of cases pending formal hearing got too high. Ms. Ibáñez asked if there was a timeframe for taking a case to hearing. Ms. Froedge stated that there is only a mandated timeframe in summary suspension cases. She stated that with other cases, the AG's Office can work with staff to develop a system to identify complicated cases that will require numerous resources.

Ms. Wynn confirmed for Dr. Goldfarb that the four cases still pending with outside counsel will be resolved by December. She is also relatively comfortable with the AG's Office's ability to resolve the cases pending with them. Dr. Goldfarb asked if the number of cases pending with the AG's Office is reasonable. Ms. Froedge stated they would need to conduct more analysis. She also stated that with the addition of Ms. Boucek, there will be three litigators assigned to take cases to hearing. Dr. Goldfarb suggested placing those cases with outside counsel now if there is reason to believe the pending 11 cases that have not been scheduled for hearing, but were referred before August 2007, will take significant time to adjudicate.

Summary Suspension Policy

Ms. McSorley stated this policy was developed after holding after action meetings with the Attorney General's Office. She explained the criteria for placing cases on a fast track for investigation and how a determination is made for the decision to summarily suspend a physician's license. Ms. McSorley stated that staff will offer a physician a consent agreement in lieu of summary suspension once the AG's Office has determined that summary suspension is appropriate. Additionally, Board staff asks the AG's Office for a written statement identifying what, if any, imminent danger exists to the public. Ms. McSorley explained that the AG's Office may ask for more investigation and overall, the policy identifies responsibility and accountability to members of the team involved in the action.

Dr. Petelin asked what the timeframe is provided to the licensee for signing a consent agreement for practice restriction. Ms. McSorley stated physicians are generally afforded 24 hours to decide; however, other circumstances are considered for either shortening or lengthening this timeframe.

Dr. Martin stated that the Board was previously provided the details of an order granting a physician costs relating to a summary suspension case. Once that case is fully adjudicated, Dr. Martin will bring the entire case before the Board for an after-action review. This will allow Board members to fully discuss aspects of the case that went well and those that did not.

Ms. Froedge commended Ms. McSorley for putting the policy together and stated that the AG's Office is in agreement with the policy and looks forward to providing the best possible advice. Mr. Lee added that deciding whether to pursue a summary suspension is often a judgment call and there is not always a clear decision.

FY 2009 Legislative Issues

Ms. Wynn informed the Board that this is the time to begin drafting statutory language for the next legislative session and asked the Board for their ideas. Dr. Martin asked if there was adequate time to include the malpractice reporting issue if the Board decided on final language at the October meeting. Ms. Wynn believed there would be adequate time.

Subcommittee Updates

Dr. Martin provided a list of Board subcommittees that have met over the last year and stated the following committees have been sunsetted:

PA Supervision Subcommittee
Office Based Surgery Subcommittee
Guideline Development Subcommittee
Scope of Practice Subcommittee (Phase I)

MOTION: Dr. Goldfarb moved to formally terminate the above committees.

SECONDED: Ms. Proulx

VOTE: 11-0

Motion passed.

Dr. Martin informed the Board that Dr. Krishna is currently working with the FSMB on issues such as telemedicine licenses and the Liaison Committee to the FSMB is on hold for now.

Ms. Wynn stated that Staff has developed a team to identify issues associated with the current Monitored Aftercare Program and will be bringing issues forward to the Physician Health Committee for discussion. Dr. Martin suggested that the Committee begin with looking at MAP issues and then expand to identify additional physician health issues. Dr. Pardo, Dr. Lee, Dr. Petelin, Ms. Griffen and Ms. Ibáñez agreed to serve on this Committee.

MOTION: Dr. Lee moved to nominate Dr. Petelin as the Chair of the PHP Committee.

SECONDED: Dr. Pardo

VOTE: 11-0

Motion passed.

Dr. Martin asked if there are other issues for which the Board would like to form a subcommittee.

MOTION: Dr. Petelin moved to form a subcommittee to look into the issue of duty to report malpractice actions.

SECONDED: Dr. Goldfarb

VOTE: 11-0

Motion passed.

Drs. Lefkowitz, Mackstaller, Petelin, and Schneider and Ms. Proulx agreed to serve on this subcommittee.

MOTION: Dr. Mackstaller moved to nominate Dr. Schneider as Chair

SECONDED: Dr. Lee

VOTE: 11-0

Motion passed.

Executive Board Membership

Dr. Martin provided an overview of current executive Board membership and noted that the current group represents both physician and public members from three different areas of the State. Dr. Martin stated he feels it is important to rotate the Chairman position to represent different areas of the State. He suggested expanding the current executive membership to a fourth position, such as a treasurer. Ms. Ibáñez suggested adding an immediate past Chair. Dr. Martin stated this was a good idea and he has relied on the help of past Chairs in his current role. Dr. Mackstaller suggested adding a Vice-Chair Elect in order to have leadership in place as Chairpersons step down. She also expressed her desire to keep a public member in the Secretary position. Ms. Ibáñez suggested a member-at-large position. Dr. Goldfarb expressed concern that by setting up the leadership in advance, the Board would be negating the purpose of holding an election. He also suggested that the Board elect the best candidate no matter where that person resides.

Ms. Boucek stated that adding another membership position is a good way for other Board members to gain a better understanding of parliamentary procedure and the events that happen behind the scenes.

Dr. Martin stated he felt serving two years as Chair was beneficial as he gained valuable experience in the first year that made decision making in his second year much easier. He also stated that the Board has benefitted from having a public

member on his executive membership team; however, in the past, the Board has not supported promoting a public member to the Chair position. This is a decision the Board, as a whole, will have to make in the future.

MOTION: Dr. Goldfarb moved to add a fourth, member-at-large, position to its executive membership.

SECONDED: Ms. Griffen

VOTE: 11-0

Motion passed.

2010-2011 Budget Proposal

Ms. Wynn provided a summary of the agency's FY 2009 operating budget. She stated the budget is static and reflects the status of the State budget overall. The agency is also concerned with additional fund balance sweeps and has proposed a conservative budget involving no major purchases. Ms. Wynn informed the Board that the agency does have some position vacancy savings. She also informed the Board that the amount of money allocated to outside legal counsel is about spent and any bills from remaining work will come from the agency's operating budget. Ms. Wynn stated that the agency is also attempting to manage its cash flow effectively by prolonging payments on items such as rent. Ms. Webster informed the Board that the agency is anticipating additional salary savings sweeps; however, she has prepared for these sweeps in the FY 2009 budget. Overall, Ms. Wynn does not foresee the agency having a fund balance that could be swept again next year.

Dr. Martin found the sweep of fund balances offensive and asked if there is anything the Board can do to eliminate this from happening in the future. Ms. Ibáñez suggested making a statement on the record noting the Board's opposition to the sweeps. Ms. Wynn explained how 10% of all license fees are automatically transferred to the State general fund. She also explained how Boards are required to obtain permission to spend money accumulated in their fund balances. On an annual basis, fees constitute about \$5.1 million in revenue for the agency. The Board receives additional funding through various fees. Dr. Lee confirmed that the agency is currently fiscally balanced. The Board also confirmed that civil penalties assessed to physicians are returned to the State's general fund. Ms. Wynn clarified that recouped formal hearing costs are returned to the agency's operating budget. She also stated that the number of licensees continues to grow at about 2% each year.

Planning of Holiday Party

Dr. Martin explained that last year, the Board held a holiday party on the evening of the second day of its December Board meeting. He asked the Board if it would like to have a party again. Dr. Schneider stated she would prefer having the party on the first night of the Board meeting. Dr. Petelin also supported the idea of the party and the Board members expressed a desire to hold the party at Sing High, as it did last year.

Future Direction and Discussion Items

Ms. Ibáñez asked the Board to consider the concept of medical students who receive medical care by faculty members in the university setting. There are issues such as privacy considerations and medical record documentation. The Board questioned whether the treating physicians are held to the same standards. The Board agreed to add this issue for consideration to the Physician Health Program committee.

Dr. Martin stated that it is currently not the agency's policy to record Board meetings. The Board did record meetings in the past, but stopped the practice. One reason was because the recordings captured side conversations during breaks. Dr. Martin stated the Board needs to have legal advice about how long the recordings need to be kept before deciding whether or not to record meetings again in the future. This will be placed on a future agenda item for consideration in executive session.

Dr. Martin stated that during the proxy signature conversation, he suggested adding some language to the Frequently Asked Questions section of the Board's website. He asked if the Board supported this idea. Ms. Ibáñez stated that the concept requires a lot of explanation and may not be appropriate for a FAQ. Dr. Pardo stated the Board was not in complete agreement on this topic and recommended not moving forward on this topic.

Dr. Goldfarb stated that the Board has previously discussed wrong site/wrong level/wrong patient surgery and has agreed that there are consistency problems with how the Board has adjudicated those cases. He suggested developing some guidelines for how to adjudicate those types of cases so that as Board composition changes, its actions can remain consistent. Dr. Petelin expressed concern with a policy because it can take away from the Board's judgment and discretion on a case by case basis when determining the appropriate action. Dr. Mackstaller agreed with Dr. Petelin and noted that

each case is different. The Board must independently evaluate cases and express their differences of opinion. Dr. Schneider asked that Board members express their opinions before voting against a motion so that the record reflects why the Board made its decision. Dr. Pardo agreed with developing guidelines and noted that they are not rigid and the Board does not need to adhere to them. Dr. Goldfarb agreed that the Board makes its decisions based on the individual facts of a case, but reiterated the need to have a uniform method of looking at the issue. This issue will be added to a future agenda for discussion.

Dr. Martin thanked staff for their hard work and noted the Board would not be able to do its job without them. He also complimented the legal team and thanked them for their hard work. He especially thanked Ms. Froedge for stepping in and filling a vacancy and Ms. Parrish for organizing the meeting.

The meeting adjourned at 2:12 p.m.



A handwritten signature in cursive script, appearing to read "Lisa S. Wynn".

Lisa S. Wynn, Executive Director